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VIA E-MAIL AND HAND-DELIVERY

May 30, 2014

Mr. Richard Haymaker
Chief Legal Counsel
Illinois Liquor Control Commission
100 West Randolph Street
Suite 7-801
Chicago, Illinois 60601

Re: Proposed Brew Pubs Rule

Dear Mr. Haymaker:

I am writing on behalf of our client Revolution Beer, LLC ("Revolution") to formally object to the adoption of the Commission's proposed Brew Pubs Rule 100.440 ("Rule").

The proposed Rule, in pertinent part, would improperly limit the sales of beer manufactured by brew pubs and sold to licensed distributors to 50,000 gallons. This proposed limitation as to sales to licensed distributors is unauthorized and in derogation of Section 5/5-1(n)(ii) of the Illinois Liquor Control Act ("Act"), which specifically permits brew pubs to make sales to distributors without reference to any cap on such sales.

Section 5/5-1(n)(ii) of the Act upon which the proposed Rule is based specifically allows a brew pub "...to make sales of the beer manufactured on the premises or, with the approval of the Commission, beer manufactured on another brew pub licensed premises that is substantially owned and operated by the same licensee to importing distributors, distributors, and to non-licensees for use and consumption."

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If the Illinois Legislature had intended to place a limit on brew pub sales to distributors, the limit would have certainly utilized and specified "distributors" in Subsection (ii), and not specified "off-premises consumption," a category which does not include or apply to any distributor, and which cannot be inferred or read from Subsection (ii), unless the ILLCC engages in impermissible legislating.

Specifically, Section 5/5-1(n) (iv) of the Act, rather than prohibit, in fact, permits brew pubs *"to sell and offer for sale at retail from the licensed premises, provided that a brew pub licensee shall not sell for off-premises consumption more than 50,000 gallons per year."* This gallonage cap undoubtedly only applies to "off-premises consumption," which in turn means sales to consumers from the licensed premises. This is because the terms "off-premises" and "consumption" are ones that are only applicable and relevant in the retail context (meaning purchase and consumption by consumers as non-licensees). Stated another way, distributors do not make sales for off-premises consumption. Rather, distributors make sales to retailers who in turn make sales to consumers for on-premises or off-premises consumption.

Further, when Subsection (iv) is viewed in conjunction with Subsection (ii), which permits brew pubs to make sales to distributors, it is illogical for a cap on distributor sales to be stated anywhere other than in Subsection (ii), if one had been intended.

Next, it is well established under Illinois law that an administrative agency may not use its rules and regulations to expand the scope of legislation to include requirements not found in a statute. Here, the Act does not contain any requirement mandating that brew pubs cap sales to distributors at 50,000 gallons. Therefore, by imposing such a cap, the Commission is exceeding its rule-making authority.

While the Commission's authority to enact rules is not disputed, the scope of those rules cannot contravene or extend the operation of the Act. Illinois case law is replete with cases which support this and other axiomatic principles:

1. A statute may not be altered or added to by exercise of power to make administrative rules and regulations thereunder;
2. An administrative body cannot extend or alter operation of a statute by exercise of its rule-making power;
3. To the extent a rule is in conflict with a statute, the rule is invalid;
4. Administrative rules interpreting a statute may neither limit nor extend the scope of that statute;

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5. Administrative agencies cannot extend substantive provisions of legislative enactment or create substantive rights through exercise of their rule-making powers;
6. Administrative rules and regulations must be authorized by statute, and the statute may not be altered or added to by making of administrative rules and regulations thereunder; and
7. An administrative agency delegated rulemaking authority has no power to make law, but instead is limited to creating rules to effectuate the will of the legislature as expressed in the relevant statute.

There is no underlying statutory language anywhere in the Act which allows the ILCC by rule or otherwise to place caps upon brew pub sales to distributors, let alone at the 50,000 gallon level. If the ILCC were to adopt the proposed rule it would be in contravention of each of the seven principles enunciated above.

Finally, you should note that by letter dated December 12, 2012, from my colleague Michael Moses to you, Mr. Moses, in pertinent part, sought your concurrence that as a matter of law, the gallonage cap was inapplicable to sales by a brewpub to a distributor. Subsequently, on January 24, 2013, I met with you, in furtherance of the letter of Mr. Moses and to obtain your answer, at which time you agreed that (i) the off-premises consumption limit did not apply to sales to distributors and (ii) there is no gallonage limit on such sales by brew pubs to distributors. After the meeting, I sent you a confirming e-mail. Copies of the letter dated December 12, 2012 and my email are enclosed.

In reliance upon your confirmation of this interpretation as to the inapplicability of the 50,000 gallon cap to distributors, Revolution expanded its production facility and on April 22, 2014, submitted its application for a Brew Pub License to the Commission, of which you are fully aware, with the intention upon issuance to surrender its Brewer and Craft Brewer Licenses.

In closing, I must point out that one of the principle purposes an administrative agency promulgates rules is to interpret and bring clarity to statutory provisions. For the reasons stated above, this proposed Rule does neither and is contrary to the law. Rather, the proposed Rule which should be adopted should read something like the following:

"The 50,000 gallonage limitation applies only to sales made by brew pubs to non-licensees for off-premises consumption which means consumers for their consumption off of the brewpubs licensed premises and is not applicable to sales by the brewpub to any licensed distributors."

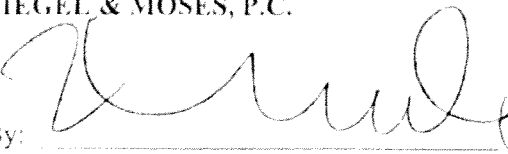
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I would appreciate receiving copies of all comments submitted by anyone else as to this proposed Rule in the event they are not timely posted on the Commission's web site.

Very truly yours,

SIEGEL & MOSES, P.C.

By: 
Zubin Kammula, Esq.

ZSK/eka
Enclosures

CC: Josh Deth
Michael A. Moses, Esq.
Gloria L. Materre, Executive Director, Illinois Liquor Control Commission
Ivan Fernandez, Associate Director (A), Illinois Liquor Control Commission

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MICHAEL A. MOSES
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VIA HAND-DELIVERY

December 12, 2012

Mr. Richard Haymaker
Chief Legal Counsel
Illinois Liquor Control Commission
100 West Randolph Street
Suite 7-801
Chicago, Illinois 60601

Re: Revolution Beer, LLC

Dear Rick:

Our office represents Revolution Beer, LLC ("Rev Beer") and Revolution Brewing, LLC ("Rev Brew"), which hold, respectively, State of Illinois Brewer and Brew Pub Licenses, as well as City of Chicago Consumption on Premises - Incidental Activity Licenses. As you will recall, at the time the Commission ("ILCC") issued a Brewer's License to Rev Beer in May 2012, you required that Rev Beer also apply for and secure a Craft Brewer's License in light of the common ownership with Rev Brew, and specifically because of the passage of the Craft Brewer's Legislation.

The purpose of this correspondence is (i) to ask whether you would re-consider your decision that Rev Beer must hold a Craft Brewer's License or alternatively, (ii) to seek your opinion as to another licensing structure which we believe would lawfully permit Rev Beer to conduct its operations without regard to the aforesaid gallonage limit while maintaining the common ownership with Rev Brew.

I. Review of Existing Licenses and Operations

Rev Beer currently operates a brewery located at 3340 N. Kedzie Avenue, Chicago, Illinois (the "Brewery"). A duly licensed tap room also operates at the Brewery and from which

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December 10, 2012
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beer brewed at the Brewery is sold for both on- and off-premises consumption. Rev Brew currently operates a brewpub located at 2323 N. Milwaukee Avenue, Chicago, Illinois (the "Brewpub").

Both entities are commonly owned, and the ILCC required that Rev Brew secure a Craft Brewer's License because of the common ownership. Rev Beer does not self-distribute (to retailers other than to Rev Brew) and does not plan to engage in further self-distribution. Because of the Craft Brewer's License that Rev Beer is required to hold, its production is capped at 465,000 gallons.

II. Prior ILCC Approval of Rev Beer Business Model

As part of the due diligence conducted by Josh Deth, the managing principal of Rev Brew, he contacted you in 2010. The specific purpose of his inquiries was to determine whether common ownership between Rev Brew and the proposed Rev Beer entity would raise a potential tied-house issue under the Illinois Liquor Control Act ("ILCA").

In a September 30, 2010 e-mail to Josh, you responded that common ownership of Brewer and Brewpub Licenses was permitted under the Illinois Liquor Control Act. (A copy of the September 30, 2010 e-mail is attached for your review.) The position you took was consistent with Goose Island holding both types of Licenses. Of course, your e-mail was prior to (i) the passage of the Craft Brewer's legislation and (ii) the purchase of Goose Island by AB-InBev.

Based upon your guidance, Rev Beer proceeded to construct the Brewery which opened in May 2012. Although Rev Brew does not self-distribute, it did, per the direction of the ILCC, obtain the Craft Brewer's License (and become subject to the production cap) based upon ILCC's changed interpretation of the legality of Brewer-Brewpub common ownership.

Rev Beer's pace of sales has grown considerably, and we want to address the 465,000 gallon production cap before it is reached.

III. Company Goals and Request to Cancel Craft Brewer's License

Rev Beer has four goals that it would like to achieve: (i) to continue with the common ownership of both Rev Beer and Rev Brew, (ii) to eliminate the production cap, (iii) to continue to sell at retail at both the Brewery and the Brewpub, and (iv) to retain the right to transfer beer between the Brewery and the Brewpub.

To be clear, Rev Beer is not seeking to participate in the middle tier of distribution, and we believe that this should be an acceptable framework for the ILCC to allow Rev Beer to cancel its Craft Brewer's License while maintaining the common ownership with Rev Brew.

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As an aside, Rev Beer and the Illinois Craft Brewers Guild are considering sponsoring legislation to revise the ILCA to explicitly permit such licensing.

IV. Dual Brewpub Licensing Plan

As a second option, Rev Beer seeks the ILCC opinion on converting its Brewer License to a Brewpub License. It is our view that doing so would allow Rev Beer to relinquish its Craft Brewer's License, and as a result not be subject to the 465,000 gallonage limit.


Under the foregoing scenario, we are of the view that the 50,000 gallonage Brewpub off-premise sales limit only applies to retail sales to non-licensees and not to sales to distributors, and more importantly, that there is no gallonage limit applicable to a Brewpub's total beer production for sale to licensees. Do you agree with these assessments? If you agree as to our interpretation of the gallonage limit, then Rev Beer may relinquish its Brewer License for that of a Brewpub.

Rick, if you would like to meet in-person, with us and Josh, we would be happy to do so. In the meantime, please don't hesitate to reach out with any questions or concerns. We look forward to hearing from you.

Very truly yours,

SIEGEL, MOSES & SCHOENSTADT, P.C.

By:


Michael A. Moses, Principal

MAM/eka
Enclosure

CC: Mr. Josh Deth

Jennifer Gallery

From: Haymaker, Richard <Richard.Haymaker@illinois.gov>
Sent: Thursday, September 30, 2010 4:13 PM
To: Josh Deth; Jennifer Gallery
Subject: RE: Brewery/brewpub questions

Yes. You would also need to divest even if you did self-distribute.

Richard R. Haymaker
Chief Legal Counsel
Illinois Liquor Control Commission
100 W. Randolph Street, Suite 7-801
Chicago, IL 60601

Ph: 312/814-1804
Email: richard.haymaker@illinois.gov

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From: joshdeth@gmail.com [mailto:joshdeth@gmail.com] **On Behalf Of** Josh Deth
Sent: Thursday, September 30, 2010 3:49 PM
To: Haymaker, Richard; jennifer@smslaw.com
Subject: Re: Brewery/brewpub questions

Rick:

Thank you for your quick response. One more question. I also own 42% of W. Restrepo Corp. DBA Handlebar Chicago, a restaurant with an incidental license. Will I be required to divest this interest in order to also hold a manufacturing license if we do not self-distribute?

Josh Deth

On Thu, Sep 30, 2010 at 3:22 PM, Haymaker, Richard <Richard.Haymaker@illinois.gov> wrote:

Richard R. Haymaker
Chief Legal Counsel
Illinois Liquor Control Commission
100 W. Randolph Street, Suite 7-801
Chicago, IL 60601

Ph: 312/814-1804
Email: richard.haymaker@illinois.gov

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From: joshdeth@gmail.com [mailto:joshdeth@gmail.com] On Behalf Of Josh Deth
Sent: Tuesday, September 21, 2010 3:37 PM
To: Haymaker, Richard
Subject: Brewery brewpub questions

Hi Rick:

I hope everything is going well at the ILCC. Now that Judge Dow has ruled, I wanted to follow up with you with the direction that the Illinois Craft Brewers Guild is taking in support of its members and I also have a specific business licensing question for you below.

Firstly, regarding the Guild, we plan to take a lead in working with the Legislature to revise the statute to restore the rights of small brewers to self-distribute including many of our brewpub members. ABDI has already reached out to us and we hope to put something forth that is as agreeable to all parties involved as we can make it. Judge Dow referenced the use of volume caps in his ruling and as we discussed on the phone previously, we agree that this is the sensible solution that Illinois should be looking at to keep our growing industry vibrant.

Sounds good. We agree and would likely have no objection to gallonage caps.

A related Guild issue we have been discussing is the retail sale of packaged goods for off-premise consumption by brewpubs. I am familiar with the Trade Practice Policy ruling that interprets the law to prohibit retail package sales, but was wondering if we could discuss the issue and possibly make a recommendation for a revision since there is a small window of opportunity seeing that the ILCC is taking a fresh look at select policies. I know that some winemakers and now the craft distillers have this ability and we'd also like to sell our artisan products direct for off-premise consumption.

I am not familiar with the requirement that brew pubs are prohibited from selling for off-premises consumption. (Please refer me to the prohibition language you have read in the TPP or statute for the prohibition). It is my understanding that if the local liquor control commission issues a liquor license to the brew pub (a requirement before a state brew pub license can be issued) and the local commission clearly permits off-premises sales, then you would be allowed to sell to customers for off-premises consumption.

Lastly, my business, Revolution Brewing LLC, a licensed brewpub is planning to open a large scale production facility at a new location for which we would seek a full Brewer license. Our existing facility is far too small to meet demand, and we would easily surpass the brewpub wholesale volume cap within a few months. I am not immediately interested in self-distribution (I heard ILCC isn't giving out any more 'dual licenses'), but want to make sure that we set up our business entities appropriately to avoid any conflict in getting the second license issued. So my exact questions are:

Can an LLC hold both brewpub and brewer licenses if each activity is undertaken at separate location? Yes but all the beer made at the brewery must be sold to an independent distributor and that independent distributor must make the product available to all retailers (not just your own). You cannot feed your brew pub location with beer made at your brewery location (at least not until small brewers are given distribution privileges)

Revolution Brewing is wholly owned by another LLC. Could this 'parent' LLC also wholly own another LLC that held a brewer license for use at a separate location? n/a see above or yes.

Also, although our new location will be production focused, we are exploring the option of operating a tasting room with beer only as permitted by the Act. Is this possible in either of the above scenarios? Yes but depending on your definition of "tasting" there are two possible scenarios. Brewers are allowed to give out samples to the general public but they can't give out more than 3, 2oz samples to any adult on any given day. We would not require you to get a retail license for that purpose and most local commission would also not require a local license. If you want to do more than 3, 2oz samples, then you will have to sell the product (can't give away) and you will need both a local and state retail license for this activity. The Liquor Control Act permits brewers to sell their own product at retail from the brewery where the product is made.

If you would like me to detail this in a letter for a formal response or take this further via our counsel (Jennifer Gallery @ Sigel, Moses), I would happy to do so.

Thank you for your time,

--
Josh Deth 773-991-0742 cell
Revolution Brewing 773-227-9187 fax
2323 N. Milwaukee Ave., Chicago, IL 60647

Advocacy Chair, Illinois Craft Brewers Guild

--
Josh Deth 773-991-0742 cell
Revolution Brewing 773-227-9187 fax
2323 N. Milwaukee Ave., Chicago, IL 60647

Zubin S. Kammula

From: Zubin S. Kammula
Sent: Thursday, January 24, 2013 4:56 PM
To: 'Haymaker, Richard'
Cc: Michael A. Moses
Subject: Revolution Beer, LLC

Rick,

I am writing to confirm our conversation of earlier today, that Revolution Beer, LLC, d/b/a Revolution Brewery may lawfully apply for a Brewpub License, and that upon issuance of same, the Brewer's License can be cancelled.

Further, the ILCC does not interpret the Brewpub 50,000 gallonage off-premises production limit to apply to distributor sales, and further that there is no gallonage limit on such sales by Brewpubs.

Based upon the foregoing, it is the intention of Revolution Beer, LLC to submit a Brewpub Application to the ILCC shortly.

If I have misstated our conversation in any way, please let me know so that we may discuss this matter further.

Thanks,

Zubin



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